

TIMOTHY M. BURGESS
United States Attorney

RICHARD L. POMEROY
Assistant U.S. Attorney
222 West Seventh Avenue, #9
Anchorage, Alaska 99513-7567
Phone: (907) 271-5071
Fax: (907) 271-2344
E-mail: richard.pomeroy@usdoj.gov

RICHARD R. STONE, SR.
Trial Attorney
U.S. Department of Justice
P.O. Box 888
Benjamin Franklin Station
Washington, D.C. 20044
Phone: (202) 616-4291
Fax: (202) 616-5200
E-mail: richard.stone@usdoj.gov

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

JOHNNIE CRISCO and THE ESTATE
OF ANNA CRISCO BY HER
PERSONAL REPRESENTATIVE,
ROBIN BOOKER,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:03-cv-011-JKS

**ANSWER TO AMENDED
COMPLAINT**

Defendant, through counsel, answers the allegations raised in Plaintiffs' Complaint as follows:

I. JURISDICTION

1. Defendant admits the allegations contained in ¶ 1 of the Complaint.
2. The allegations in ¶ 2 of Plaintiffs' Complaint call for a legal conclusion to which no answer is required; to the extent an answer is sought, the allegations are denied.
3. The allegations in ¶ 3 of Plaintiffs' Complaint are admitted.
4. The allegations in ¶ 4 of Plaintiffs' Complaint are admitted.
5. The allegations in ¶ 5 of Plaintiffs' Complaint are admitted.

II. ALLEGATIONS OF NEGLIGENCE

6. Defendant's responses to ¶¶ 1 through 5 of Plaintiffs' Complaint are incorporated herein by reference.
7. The allegations in ¶ 7 of Plaintiffs' Complaint are admitted.
8. The allegations in ¶ 8 of Plaintiffs' Complaint are denied.
9. The allegations in ¶ 9 of Plaintiffs' Complaint are denied.
10. The allegations in ¶ 10 of Plaintiffs' Complaint are denied.
11. The allegations in ¶ 11 of Plaintiffs' Complaint are denied.
12. All allegations in the Complaint not specifically answered are herein denied.

AFFIRMATIVE DEFENSES

1. The Plaintiffs have failed to state a cause of action upon which relief may be granted.
2. The United States violated no actionable duty owed to the Plaintiffs.
3. The injuries and/or damages alleged in the Complaint were not proximately caused by the negligent or wrongful act or admission of an employee of the United States who was acting within the scope of their employment.

4. Plaintiffs recovery, if any, must be proportionately reduced by the degree of comparative negligence of the Plaintiffs.

5. Plaintiffs recovery, if any, should be restricted to damages allowable by Alaska statutory or common law.

6. Pursuant to A.S. 09.55.548, the United States is entitled to offset benefits paid for or payable by, in whole or in part, state or federal government programs not subject to subrogation. The amount of damages awarded in this action, if any, should be reduced accordingly.

7. All other defenses not herein stated are specifically reserved and shall be asserted at such time as the facts supporting their assertion are known to, or discovered by, the Defendant.

WHEREFORE, Defendant prays for the following relief:

1. Dismissal of Plaintiffs' Complaint and entry of judgment in favor of the Defendant;
2. Defendant be awarded costs for defending this action; and
3. For such other and further relief as the Court deems just and equitable under the circumstances.

Respectfully submitted this 13th day of January, 2006, in Anchorage, Alaska.

TIMOTHY M. BURGESS
United States Attorney

s/Richard L. Pomeroy
Assistant U.S. Attorney
222 West 7th Ave., #9, Rm. 253
Anchorage, AK 99513-7567
Phone: (907) 271-5071
Fax: (907) 271-2344
E-mail: richard.pomeroy@usdoj.gov
AK #8906031

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2006,
a copy of the foregoing Answer to Amended
Complaint was served via U.S. mail

George M. Kapolchok, Esq.
Kapolchok Law Offices, LLC
360 K Street, Suite 100
Anchorage, AK 99501

s/ Richard L. Pomeroy